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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,792	02/27/2004	Jean-Manuel Gomes	R029	9458

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WOMBLE CARLYLE SANDRIDGE & RICE, PLLC
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P.O. BOX 7037
ATLANTA, GA 30357-0037

EXAMINER

ELKINS, GARY E

ART UNIT	PAPER NUMBER
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3782

MAIL DATE	DELIVERY MODE
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07/16/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Office Action Summary	Application No.	Applicant(s)	
	10/789,792	GOMES ET AL.	
	Examiner	Art Unit	
	Gary E. Elkins	3782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 41, 42, 44-47, 58-60, 62-67, 72 and 74-77 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 41, 42, 44-47, 58-60, 62-67, 72 and 74-77 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 41, 42, 44-47, 58-60, 62-67, 72 and 74-77 are rejected under 35 U.S.C. 103(a) as obvious over Auclair '277 in view of Sutherland '316 and Spivey et al '903. Auclair '277 discloses all structure of the claimed carton except a substantially straight bottom tear line or fold line and first and second tear lines which each extend diagonally in a straight section through the first or second side panel. Each of Sutherland '316 and Spivey et al '903 teaches that it is known to make the bottom tear/fold line in a removable end section of a container substantially straight and parallel to the bottom panel of a dispensing carton. Spivey et al '903 further teaches that it is known to make side panel tear lines (78) with diagonally extending straight sections. It would have been obvious to make the bottom tear line in Auclair '277 parallel to the bottom of the carton as taught by either Sutherland '316 or Spivey et al '903 to allow folding out of the removable section prior to complete removal from the carton. Both the tearing out and folding of side dispensing flaps in can cartons is known in this art. It would further have been obvious to make the side tear lines in Auclair '277 with straight diagonal sections as is further taught by Spivey et al '903 as a mere selection of the shape of the side tear lines and to provide easier removal of the side sections along straight lines.

3. Claim 61 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 41 above and further in view of Lingamfelter '293. Auclair '277 discloses all structure of the claimed carton except twelve containers within the carton in a three by four arrangement. Lingamfelter '293 teaches that it is known to package cans in a carton using a three by four arrangement. It would have been obvious to make the carton in Auclair '277 to hold the cans in a three by four arrangement as taught by Lingamfelter '293 as a mere selection of how many cans one wishes to package and since such an arrangement is economically acceptable and a common arrangement in the art.

Response to Arguments

4. Applicant's arguments filed 30 April 2007 have been fully considered but they are not persuasive.

The remarks assert that there is no suggestion in the prior art of forming bottom tear lines which are substantially straight or of forming side tear lines which extend diagonally in a straight section. In response, each of Sutherland '316 and Spivey et al '903 clearly suggests formation of a tear out dispensing section in a can carton with a straight bottom fold line which facilitates folding the section outwardly prior to complete removal of the dispensing section. It is believed that the advantages of this construction would have been apparent to one of ordinary skill in this art and that formation of the carton in Auclair '277 with a substantially straight bottom tear/fold line would have been obvious in view of the suggestion. Spivey et al '903 clearly suggests formation of diagonally extending straight sections (78) within the sidewall portions of a tear out can dispenser. Such a formation is considered to provide easier tearing of the sections as opposed to forming the sections with a curved shape. Also, other than ease of tearing, no

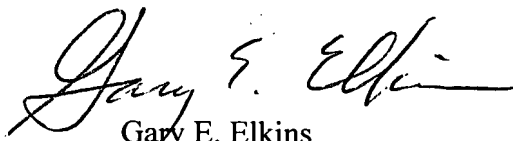
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functional distinction is seen between the curved shape of Auclair '277 and the straight shape of Spivey et al '903. It is noted that the side wall sections in Spivey et al '903 are designed to allow engagement of the cans by hand for removal in like manner as in Auclair '277.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Gary E. Elkins
Primary Examiner
Art Unit 3782

gee
08 July 2007